

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0623 CS

Controlled Substance Excise Tax

For The Period: 02/14/94

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ISSUES

I. Controlled Substances Excise Tax - Liability

Authority: IC 6-7-3 *et. seq.*; *Bryant v. State of Indiana*, 660 N.E.2d 290 (Ind.1995), *Bailey v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995), *Hayse v. Indiana Department of State Revenue*, 660 N.E.2d 325 (Ind.1995), *Hall v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995), *Cliff v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995), *Indiana Dept. of Natural Resources v. Town of Syracuse* 686 N.E.2d 410 (Ind.App 1997).

STATEMENT OF FACTS

On July 22, 1993, Officers of the Michigan City Police Department stopped and searched the taxpayer. Taxpayer possessed a plastic bag containing a white rock-type substance, which the police seized. Taxpayer was arrested for conspiracy to deal cocaine. The white rock-type substance was tested and proved to be crack cocaine weighing 14.57 grams. The taxpayer pled guilty to dealing cocaine, a class B felony, on December 16, 1993. Agents of the Indiana Department of State revenue assessed Controlled Substances Excise Tax ("CSET") against taxpayer on February 11, 1994. The taxpayer filed protest against the assessment.

I. Controlled Substances Excise Tax - Liability

DISCUSSION

In Indiana, the manufacture, possession or delivery of cocaine is taxable. IC 6-7-3-5. There was no CSET paid on taxpayer's cocaine, so the Department assessed tax against him and demanded payment. Indiana law specifically provided that notice of a proposed assessment is *prima facie* evidence that the Department's assessment is valid. IC § 6-8.1-5.1. The taxpayer now bears the burden of proving the Department's assessment is wrong. In support of his protest, taxpayer states, *inter alia*, that the imposition of taxes after he has plead guilty and served his sentence constitutes Double Jeopardy under the United States and Indiana Constitutions. U.S.Const.Amend. V; Ind. Const. Art I. § 14.

The Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This clause applies to the states through the Fourteenth Amendment. Similarly, the Indiana Constitution provides that "No person shall be put in jeopardy twice for the same offence". Recently, our Supreme Court has held that a CSET assessment is considered jeopardy under Constitutional analysis, *Bryant v. State of Indiana*, 660 N.E.2d 290, 296 (Ind.1995), and that the jeopardy attaches when the assessment is served on the taxpayer. *Id* at 299.

Because, taxpayer was subject to jeopardy when he pled guilty to his criminal possession, and delivery of the cocaine, the Department's subsequent assessment of CSET does in fact constitute a second jeopardy. Accordingly, a second jeopardy is impermissible under our state and federal constitutions. Therefore, the assessment cannot stand.

FINDINGS

Taxpayer's protest is sustained. The assessment is invalid.